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FISCAL IMPACT REPORT

ORIGINAL DATE 1/17/15
 SPONSOR Cisneros LAST UPDATED 3/3/15 HB _____
 SHORT TITLE Cybersecurity Device Gross Receipts SB 99
 ANALYST van Moorsel

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17	FY18	FY19		
\$0.0	Negative – See “Fiscal Implications”				Recurring	General Fund

(Parenthesis () indicate revenue decreases

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
 Economic Development Department (EDD)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 99 creates a new section of the Gross Receipts and Compensating Tax Act to create a deduction for gross receipts from the sale of a cyber security device that is a port locking device, a port monitoring device or a port monitoring software application. Taxpayers claiming the deduction must separately state the amount of the deduction.

Senate Bill 99 is endorsed by the Revenue Stabilization and Tax Policy Committee.

The bill defines "port locking device," "port monitoring device," and "port monitoring software application."

The bill states the purpose of the deduction is to create jobs in the state in the field of cyber security by encouraging businesses that provide defensive barriers for protecting computer systems and networks to move to New Mexico.

The bill provides for a reporting requirement. TRD must compile an annual report on the

deduction that includes the number of taxpayers that claimed the deduction, the amount of deductions claimed and other information necessary to evaluate the effectiveness of the deduction. Beginning in 2018 and every three years thereafter, TRD must compile and present the annual reports to the Revenue Stabilization and Tax Policy committee and the LFC with an analysis of the effectiveness and cost of the deduction and whether the deduction is performing the purpose for which it was created.

The bill includes a sunset provision, as only qualifying receipts prior to July 1, 2025 may be deducted.

The effective date of the provisions of SB 99 is July 1, 2015.

FISCAL IMPLICATIONS

TRD reports the potential impact of this bill is impossible to estimate with any degree of certainty. TRD's Information Technology Division (ITD) and Chief Security Officer believe the definitions in the bill to be too broad, potentially leaving the deduction open to unintended beneficiaries. Given this uncertainty, TRD notes the bill has the potential to have a significant negative impact on revenues.

However, the EDD analysis notes there is currently no company operating in New Mexico that would qualify for this deduction. EDD adds the intent is to attract such companies and therefore a review after enactment will determine future fiscal impact.

DFA adds this deduction is endorsed by a start-up company that currently has no revenues. It is not anticipated that the state will lose any revenue it currently receives as a result of this deduction. Further, DFA notes exports are not subject to the GRT, and it is assumed that most of these products will be sold out of state. To the extent that businesses or individuals in New Mexico are purchasing these products, the final price will be reduced by this deduction.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

Because the bill states the purpose of the deduction is to create jobs in New Mexico, TRD contends a GRT deduction may not be the most effective cyber security job creation incentive in New Mexico. Noting that GRT is largely a pass-through tax, the business may not see significant gains from a GRT deduction as the deduction would mean the industry would not have to pass the tax to the customer when making sales to New Mexico customers.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

ADMINISTRATIVE IMPLICATIONS

TRD reports the bill would require changes to multiple systems including GenTax, the tax system of record, Taxpayer Access Point (TAP), the key from image software application, as well as the creation of a new report.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate

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